

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN J. CORRY,

No. C-12-5152 EMC (pr)

Plaintiff,

v.

ALAMEDA COUNTY SHERIFF'S
OFFICE, *et al.*,

Defendants.

**ORDER FOR SECOND AMENDED
COMPLAINT AND VACATING
BRIEFING SCHEDULE**

This matter is now before the Court to deal with a pleading problem in this *pro se* prisoner's civil rights action. The Court will require Mr. Corry to file a second amended complaint or suffer the dismissal of a defendant. The Court also will vacate the existing briefing schedule for dispositive motions, and send two more blank subpoenas to Mr. Corry.

A. The Pleading Problem

In his complaint, Mr. Corry alleged that deputies had used excessive force on him on July 1, 2011 at the Santa Rita Jail. The complaint did not provide names for any of the individual deputies who allegedly used force on him. The Court granted leave to amend, and Mr. Corry provided one name: Deputy Gordon. The Court then ordered service of process on Deputy Gordon, who eventually was served. Meanwhile, Mr. Corry wrote a letter saying he "remember[ed] another name," Deputy Vallandingham. Docket # 15. Mr. Corry then moved for leave to amend and filed a first amended complaint in which he alleged that Deputy Vallandingham used excessive force on him on July 1, 2011 and did not mention Deputy Gordon. *See* Docket # 17 and # 18.

1 The “general rule is that an amended complaint supercedes the original complaint and
2 renders it without legal effect.” *Lacey v. Maricopa County*, 693 F.3d 896, 925 (9th Cir. 2012).
3 There are exceptions to the general rule when the district court has dismissed a claim, but those
4 exceptions do not apply to the present situation because Mr. Corry’s amended complaint is not the
5 result of the Court having dismissed his claim against Deputy Gordon. His failure to assert any
6 claim against Deputy Gordon in his amended complaint amounts to a voluntary dismissal of any
7 claim against Deputy Gordon. *See id.* at 928 (“for any claims voluntarily dismissed, we will
8 consider those claims to be waived if not repled). The Court suspects that the *pro se* plaintiff is
9 unaware of this pleading rule. The Court thus is uncertain whether Mr. Corry wanted to dismiss his
10 claim against Deputy Gordon or mistakenly thought he could proceed against different defendants in
11 different pleadings.

12 Mr. Corry’s motion to amend the complaint is GRANTED. (Docket # 17.) The motion is
13 granted because he could amend as a matter of right under Federal Rule of Civil Procedure 15(a)
14 before defendant filed a responsive pleading or motion to dismiss. The operative pleading now is
15 the first amended complaint (Docket # 18) filed on October 21, 2013.

16 In light of the concern that Mr. Corry may have failed to include Deputy Gordon in the first
17 amended complaint by mistake, the Court now GRANTS Mr. Corry leave to file a second amended
18 complaint or to file a notice that he voluntarily dismisses Deputy Gordon as a defendant. The
19 second amended complaint must include *all* his claims against *all* the defendants for the July 1, 2011
20 incident. As to any defendants whose names he does not know, Mr. Corry may sue them as Doe
21 defendants, bearing in mind the information about Doe defendants at page 2 of the February 2, 2013
22 order of dismissal with leave to amend. Failure to allege a claim against Deputy Gordon and/or
23 Deputy Vallandingham in the second amended complaint will result in the dismissal of that
24 defendant.

25 B. Miscellaneous

26 In light of the need for Mr. Corry to address the pleading problem, Deputy Gordon’s motion
27 to continue the dispositive motion deadline is GRANTED. (Docket # 23.) The briefing schedule for
28

1 dispositive motions is now vacated, and a new briefing schedule will be set after the pleading
2 problem is resolved.

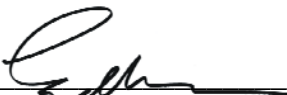
3 Pursuant to the order of service and partial dismissal, the clerk sent two blank subpoenas.
4 Mr. Corry returned a subpoena, but failed to specify on the subpoena what document he wanted
5 produced. The clerk will send two more blank subpoenas to produce documents for him to use to try
6 to find names for the Doe defendants. Mr. Corry is cautioned that a records subpoena is useless
7 unless he describes the particular documents he wants produced in the blank space under the portion
8 of the form that begins, "Production: YOU ARE COMMANDED to produce..."

9 Mr. Corry must file a second amended complaint complying with the directions in this order
10 no later than **March 28, 2014**. If he does not file a second amended complaint by that date, the
11 Court will dismiss Deputy Gordon from the action.

12 Mr. Corry's "response to Deputy Matthew Gordon's Answer To Plaintiff John J. Corry
13 Complaint" (Docket # 24) is STRICKEN from the record. The complaint and answer are called the
14 pleadings in a case, and their purpose is to set out the parties' formal allegations, i.e., a plaintiff's
15 claims and a defendant's defenses. Those are the only pleadings generally allowed. A plaintiff is
16 not allowed to file a reply to the answer to the complaint unless the Court specifically permits him to
17 do so. *See* Fed. R. Civ. P. 7(a)(7). The Court declines to permit Mr. Corry to file a reply (or, as he
18 called it, a response) to the answer because it is unnecessary and unhelpful. The defenses alleged in
19 the answer are deemed to be controverted by the plaintiff. *See* Fed. R. Civ. P. 8(b)(6). In other
20 words, it is presumed as a legal matter that a plaintiff disagrees with everything defendants have
21 alleged in their answer and he does not need to file another pleading to say so.

22
23 IT IS SO ORDERED.

24
25 Dated: February 21, 2014

26
27 
28 EDWARD M. CHEN
United States District Judge